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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

NATHALEE EVANS, Plaintiff and Appellant, v. TRACY SHEEN, Defendant and Respondent; LESLIE HOWELL et al., Objectors and Respondents.	B196909 (Los Angeles County Super. Ct. No. BP098270)
NATHALEE EVANS, Plaintiff and Appellant, v. TRACY SHEEN, Defendant and Respondent.	B201949 (Los Angeles County Super. Ct. No. BP098270)

NATHALEE EVANS et al., Plaintiffs and Appellants, v. TRACY SHEEN, Defendant and Respondent; LESLIE HOWELL et al., Objectors and Appellants.	B202637 (Los Angeles County Super. Ct. No. BP098270)
TRACY SHEEN, as Trustee, etc., Plaintiff and Respondent, v. NATHALEE EVANS, Defendant and Appellant.	B209064 (Los Angeles County Super. Ct. No. BP098270)

APPEALS from orders and the judgment of the Superior Court of Los Angeles County. Michael I. Levanas, Judge. Appeal in No. B196909 dismissed. Order in No. B201949 affirmed. Orders in No. B202637 affirmed in part. Judgment in No. B209064 affirmed.

Nina Ringgold for Nathalee Evans in Nos. B196909, B201949, B202637, and B209064.

Law Offices of Richard Pech and Richard Pech for Tracy Sheen in Nos. B201949 and B209064.

Lewis Brisbois Bisgaard & Smith and William John Rea, Jr. for Leslie Howell, Fritzie Galliani, and Law Office of Fritzie Galliani in Nos. B196909 and B202637.

Evan D. Marshall and Marc B. Hankin in pro. per. in No. B202637.

Anthony Sheen in pro per. in No. B202637.

Eugenia Ringgold created a trust and subsequently modified it by interlineation to change the first successor trustee to Tracy Sheen. After Ringgold's death, Sheen[1] petitioned to be named trustee. Nathalee Evans, the second listed successor trustee, sought a declaration that Sheen's petition violated the trust's no contest petition. Evans has appealed a variety of rulings in the action, including the trial court's ultimate determination that the trust modification was valid and its confirmation of Sheen as trustee. During the course of the litigation, Sheen's counsel was disqualified, and the attorneys appeal the disqualification order and the sanctions imposed against some of them. We dismiss the appeal in No. B196909; reverse one sanctions award in No. B202637; and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 1997 Ringgold created a living trust that named three successor trustees, one of whom was Evans. The trust instrument named Ringgold as both the settlor and the original trustee, gave Ringgold the unrestricted power to revoke or amend the trust during her lifetime, and specified that amendments were to be made "in a written document other than a Will and shall be effective when received by the Trustee."

In 2003 Ringgold returned to her attorney and amended the trust instrument by interlineation to name Sheen the first successor trustee of the trust. Ringgold died in 2006.

In May 2006 Sheen petitioned to be confirmed as the successor trustee. In October 2006 the trial court heard Evans's motion to disqualify Sheen's counsel. In November 2006 Evans filed a petition seeking a determination that Sheen had violated the no contest provisions of the trust by filing her petition to be confirmed as trustee.

On December 19, 2006, the trial court denied Evans's motion to disqualify counsel by written order. Evans filed a motion for reconsideration and "clarification" of the

[1] All references to "Sheen" herein are to Tracy Sheen. References to others with the Sheen surname will include the individual's first name.

order. On January 26, 2007, the trial court instead issued an order to show cause on the court's own motion for reconsideration. On February 20, 2007, Evans filed a notice of appeal relating to the December 19 order denying her motion for disqualification and the purported denial of her motions for clarification and reconsideration "by operation of law on or about January 26, 2007" by virtue of the court's granting of reconsideration on its own motion. She acknowledged that the December 19 ruling had been vacated by the trial court on February 15, 2007, but appealed that ruling as well. This appeal has been assigned No. B196909.

A beneficiary of the trust, Anthony Sheen, joined in Evans's attempts to secure disqualification of Tracy Sheen's counsel. He joined in Evans's further briefing on the disqualification issue in February 2007 and submitted his own briefing on the reconsideration of the denial of the earlier motion. Evans filed a new memorandum of points and authorities concerning disqualification on February 28, 2007, and Anthony Sheen apparently[2] filed a disqualification motion of his own in February 2007. Counsel for Tracy Sheen substituted out of the action on June 29, 2007.

On July 5, 2007 the court denied as premature Evans's petition alleging that Sheen's petition to be confirmed as trustee was a contest. Evans appeals this ruling in No. B201949.

On August 31, 2007, the court entered an order granting Anthony Sheen's motion to disqualify Tracy Sheen's counsel. On September 21, 2007, the court entered an order granting Evans's motion to disqualify the same counsel. The attorneys appeal these orders as well as a series of sanctions orders that were made between July and September 2007, in No. B202637. Evans filed a cross-appeal in No. B202637 concerning the content of the court's disqualification orders and the denial of additional relief she requested.

On May 30, 2008, the trial court filed its statement of decision holding that the amendment to the trust was valid; confirming Sheen as the trustee; and rejecting a variety

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[2] We qualify this statement because the copy of the motion provided by appellants in No. B202637 bears a handwritten date and no file stamp.

of other arguments made by Evans, including her contention that Sheen's petition to be confirmed as trustee amounted to a contest of the trust. Sheen appeals this ruling in No. B209064.

DISCUSSION

I. Case No. B209064

A. Validity of the Trust Amendment

Although Evans raises many issues in her numerous appeals, the ultimate issue is whether the alteration to the trust instrument made by Ringgold in 2003 was a valid amendment. The trial court concluded that it was, and substantial evidence supports that ruling.

The trust document left the power to modify the trust in Ringgold's hands for the duration of her lifetime, and it provided that amendments, revocations, or notices of withdrawal "shall be in a written document other than a Will and shall be effective when received by the Trustee." Ringgold's attorney, Mitchell Port, witnessed Ringgold's 2003 modification of the trust instrument. Port testified that the amendment naming Sheen as successor trustee was made in blue ink by Ringgold in his presence on the trust instrument itself, and that Ringgold took a blue ink original with her when she left his office. The trial court accepted this testimony over the unsupported conflicting testimony of Evans, specifically finding Port's testimony more credible than Evans's.

This evidence is sufficient to demonstrate that the 2003 Ringgold amendment was valid. First, the amendment was made in a written document other than a will: Ringgold wrote in Sheen's name by hand on the trust instrument itself and made other written alterations. Evans's argument that the modification had to be made in a separate written document is unsupported by any language in the trust instrument. Second, at the time of

the modification Ringgold was both the settlor and the trustee,[3] so the amendment was effective when delivered to her. Evans's argument that the modification had to be delivered to all successor trustees before it took effect finds no support in the language of the trust document or in any other authority. Section 10.9 of the trust, defining "Trustee" as used in the trust document to mean the original trustee and successor trustees, appears to be a means of ensuring that references to the trustee throughout the document are construed to include the original trustee as well as any successor acting as trustee; Evans has not demonstrated that it creates an independent requirement that modifications made by the original trustee under her absolute authority to do so must be delivered not only to her but also to every successor trustee before the modification takes effect. Evans's claim that she was "in office" as a trustee at the time of the modification is belied by the language of the trust itself, which provided that a successor trustee would act as trustee "[i]f Eugenia M. Ringgold becomes unwilling or unable to act." Immediately before Ringgold modified the trust instrument, Evans was the first living person in line to be confirmed as successor trustee (because the person originally named before her, Charles Evans, had died), but she was not a trustee.

There is also no merit to Evans's argument that Ringgold's modification of the trust instrument was "a failed testamentary disposition without compliance with Probate Code [section] 6110." As we have already discussed, substantial evidence supports the trial court's conclusion that Ringgold modified the trust instrument, and all the authority Evans cites concerning the requirement of the delivery of gifts is irrelevant. Contrary to Evans's assertion, the terms of the trust did not require that successor trustees receive amendments prior to Ringgold's death for them to be effective, and Evans has not shown any error by the trial court on this ground when it concluded that the modification was valid and that Sheen was entitled to be confirmed as successor trustee.

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[3] See, e.g., the trust preamble, specifying Ringgold as the "Settlor" or "Trustee" where applicable; paragraph 10.9, defining "Trustee" as the original trustee named in the first sentence of the trust and any successor trustee; and references throughout the trust document making clear that Ringgold was both the settlor and the original trustee.

Evans argues that even if Ringgold was the sole trustee, it is "not credible" that she would see her attorney for the purpose of having him watch her amend the trust by interlineation. Therefore, she rejects the evidence that the modification was made and concludes, "there was no valid amendment because of the lack of an amendment 'in a written document'." The trial court, however, found credible the testimony of Ringgold's attorney that she came in for the purpose of changing the terms of her trust and that she inserted Sheen's name as the first successor trustee in her handwriting as he watched. "[W]e defer to the trier of fact on issues of credibility." (*Lenk v. Total-Western, Inc.* (2001) 89 Cal.App.4th 959, 968.) Conflicts and even testimony which may be subject to justifiable suspicion do not justify the reversal of a judgment, for it is the trier of fact's exclusive province to determine witness credibility and the truth or falsity of the facts upon which a determination depends. (*Ibid*.) Evans has not offered any reason to believe that Port's testimony was physically impossible or obviously false, and we therefore may not reject the evidence, credited by the trial court, that Ringgold modified the trust instrument in writing before Port in September 2003.

Evans also makes a series of arguments concerning Ringgold's intent in creating the trust. She contends that Ringgold "intended both the executors of her will and the trustees of her trust to be the same person and there is no valid codicil to her will and no elimination of the name of Evans. Therefore, the trust should be interpreted consistent with the intent of Eugenia [Ringgold] based on proper witnessed documents which continuously state Eugenia's intention that Evans act as trustee and executor." This argument notably omits any citation to the undisputed evidence she asserts supports her claim, but that is of no moment: Regardless of the status of Ringgold's will, in 2003 she changed the first successor trustee of her trust from Charles Evans to Tracy Sheen. Whatever comprehensive estate plan Ringgold may have originally intended, contentions of Ringgold's intent at that time offer no basis for undermining the trial court's determination that Ringgold validly modified her trust instrument in 2003.

Finally, Evans presents an argument entitled, "Tracy Sheen Did Not Argue That The Trust Amendment Procedures Were Not Mandatory Or That A Statutory

Amendment Procedure Replaced The Mandatory Procedures Specified In The Trust." We understand the proceedings in the same way: Sheen argued, and more importantly, the trial court concluded, that the trust had been modified in accordance with its terms. Evans continues this argument with a recitation concerning Probate Code[4] sections 15401 and 15402, although she acknowledges that Sheen "did not argue" that section 15401 applied and that the court did not apply section 15401. The statutes, which concern trust modifications when the trust instrument contains no mandatory procedure for modification, are entirely inapplicable here. This argument affords no basis for overturning the court's ruling.

B. Evidentiary Issues

Evans contends that the trial court abused its discretion when it considered Exhibit D and when it excluded the testimony of Courtney Sheen.

Evans offers a long list of complaints about Exhibit D, but she was the one who asked the trial court to admit Exhibit D into evidence. She claims now that this was inadvertent and that she later tried to "correct the reference," and was refused by the court, but she offers no citation to the record to support this assertion. Nothing in the portion of the record she has cited to us suggests that this was an inadvertent error—Evans's counsel told the court that she wanted to "make sure Exhibits C through G are admitted into evidence," and the trial court went through each exhibit, describing each one and asking Sheen's counsel if he objected to Evans's request that it be admitted into evidence. Evans cannot now object to an exhibit she offered into evidence. (Evid. Code, § 353.)

Evans also claims that the trial court erred when it allegedly excluded the testimony of Courtney Sheen. Evans's argument concerning this testimony consists of one paragraph and no citations to the record. This alone would permit us to reject her argument. (*Placer County Local Agency Formation Com. v. Nevada County Local*

[4] All further statutory citations are to the Probate Code unless otherwise indicated.

Agency Formation Com. (2006) 135 Cal.App.4th 793, 814 (*Placer*) [reviewing court need not address points in briefs that are not supported by adequate factual or legal analysis].) We have, however, reviewed the nearly 20 pages of Courtney Sheen's testimony in the record and find no blanket exclusion of her testimony. Instead, the court sustained at least 15 objections to the questions asked by Evans's counsel on a variety of bases, including hearsay, relevance, leading, the question having been asked and answered, and improper foundational questioning. Evans does not explain which, if any, of these rulings was incorrect, merely asserting that Courtney Sheen's "notes and confirming letter to [Leslie] Howell related to the alleged amendment and what Courtney Sheen believed to be threats that her children would not benefit from the trust if she attended the May 16, 2006 hearing." She then states that "the statements of Howell" involved an admission imputable to a party that is inconsistent with the position the party is taking in the current proceedings, an exception to the hearsay rule. She alleges that "the evidence" was relevant "to the trustworthiness of the purported amendment" and that "the testimony" was admissible for non-hearsay purposes. Evans, however, has not identified which "evidence" and which "testimony" she means, leaving us to sort out from the entirety of the witness's examination which rulings were and were not well-taken based on her broad assertions. This is a task for appellant, not a reviewing court. "'Appellant asserts that the trial court erred in respect to various rulings admitting and rejecting evidence. . . . Counsel merely states in each instance that the court erred, and follows the statement with a reference to the transcript, leaving us to follow up the reference and thus ascertain the nature of question, objection, and ruling. In a somewhat similar situation we said: "Such a casual presentation of points, if followed up, would impose upon us a labor which is within the peculiar province of counsel, and which does not come within the range of our duty. We are not called upon to consider points so presented."' [Citation.] 'It is the duty of counsel by argument and citation of authority to show in what manner rulings complained of are erroneous. We are not obliged to perform the duty resting on counsel.' [Citation.]" (*Givens v. Southern Pac. Co.* (1961)

194 Cal.App.2d 39, 47-48.) Evans has not demonstrated any abuse of discretion in the trial court's rulings with respect to Courtney Sheen's testimony.

C. Arguments Identified as Jurisdictional and Preliminary

1. Jurisdiction to Proceed with Petition

Evans argues that the trial court lacked jurisdiction to proceed with respect to Sheen's petition to be confirmed as trustee because Sheen failed to provide mandatory statutory notice, "including notice to the named respondent." The named respondent in the petition was Dorian Carter. Evans does not identify anyone other than Dorian Carter who purportedly was not served with the petition, nor does she identify any evidence in the record demonstrating the alleged failure of service. In support of this claim Evans cites to argument by counsel rather than to evidence. Evans has not demonstrated that she has standing to raise this issue of service on Dorian Carter, nor has she not set forth any admissible evidence to support her claim that the court lacked jurisdiction to proceed here. "[I]t is appellant's burden to affirmatively show error. [Citation.] To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error." (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.)

2. Claimed Stay

Evans argues that her appeals dated February 20, 2007 (No. B196909) and August 29, 2007 (No. B201949) automatically stayed the proceedings on the petition to confirm Sheen as the trustee of the Ringgold trust. This argument is meritless.

Evans characterizes her appeal in No. B196909 as arising from her petition for violation of the no contest provisions of the trust, but that matter is instead an appeal from orders of the trial court relating to disqualification of Sheen's counsel. Evans

contends that the attorney disqualification and no contest issues are "inseparable" because Sheen cooperated with and facilitated the attorney fee collection efforts and effort to liquidate a piano that was owned by Ringgold, but we identify no necessary intertwinement of the disqualification motions and Evans's petition to have Sheen's action declared a contest. The decision on which Evans relies to support her contention that all further proceedings in the matter were nullified by her appeal, *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 912, concerns a court's inability to act on a motion to set aside a default and default judgment after the default judgment was appealed, not at all the situation here. Because, as will be discussed further *post*, the appeal in No. B196909 was an appeal from nonappealable orders, it was never perfected and no stay under Code of Civil Procedure section 916 resulted. (See *Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 666 (*Pazderka*).) Even if No. B196909 had been an appeal from an appealable order, however, the appeal in No. B196909 would not have stayed these proceedings. (*Reed v. Superior Court* (2001) 92 Cal.App.4th 448, 453-454 [appeal from an order denying a motion to disqualify counsel does not automatically stay all further trial court proceedings].)

Nor did the appeal in No. B201949 stay the entire action. The decision at issue in that matter was the trial court's ruling that Evans's petition to have Sheen's petition declared a contest was premature. Even if we considered the appeal in No. B201949 to "stay[] the operation and effect of the judgment or order" (§ 1310, subd. (a)), we are at a loss to imagine how some sort of stay of the operation of a denial of a petition as premature could possibly translate into a stay of the entire matter. Evans offers no explanation or authority to support her contention that this appeal automatically stayed the entire action, nor do we find support in the law for her position. (See *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189-191.)

Evans argues that even if there is no statutory stay under section 1310, subdivision (a), the matter should be stayed based on analogy to a special motion to strike. According to Evans, just as the appeal of an order denying a special motion to strike under Civil Procedure Code section 425.16 stays all further trial court proceedings on the

merits upon the causes of action affected by the motion, so too should the appeals in Nos. B196909 and B201949 stay the proceedings in the trust action. This argument is based on two misconceptions that pervade Evans's briefing: the idea that the no contest clause in Ringgold's trust "prohibits the very existence of any proceeding in the trial court" with respect to the trust such that a determination that the action was a contest would somehow halt the litigation; and the belief that the fact that the trial court generally decides whether an action is a contest under a safe harbor proceeding without resort to the merits of the action itself means that the trial court here was compelled to rule that the action was a contest without determining the merits of Sheen's petition to be confirmed as trustee. Both of these contentions are unsupported by any cognizable argument or by any pertinent authority. The circumstances here are not analogous to those in a Code of Civil Procedure section 425.16 proceeding. Evans has not demonstrated any entitlement to a stay of the action based on her appeals in Nos. B196909 and B201949.

3. Unfairness

In a one-paragraph argument that includes a citation to one court decision and no citations to the record, Evans argues that a conflict of interest resulting in the disqualification of three attorneys caused the trial proceedings to be unfair. She contends that this unspecified conflict existed at the start of the trial and that one attorney's unexplained "conduct after his disqualification prejudicially tainted the proceedings." She notes that some unspecified "pleadings" were stricken by the court but argues that the court could not "undo" the prejudice that she does not describe. These conclusory assertions, without explanation, cogent argument, citation to the record, or analysis of pertinent authority, are insufficient to present grounds for appellate review. (*Levin v. Ligon* (2006) 140 Cal.App.4th 1456, 1486 (*Levin*); *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1428-1429.) Even if we consider the three paragraphs of additional allegations made by Evans elsewhere in her brief concerning disqualified counsel, Evans has still failed to establish any prejudice that

persisted after the attorney in question was sanctioned and his filings stricken: she merely concludes, without further discussion, that "there was little that could be done to undo the damage."

D. Denial of the Motion for Judgment Pursuant to Code of Civil Procedure Section 631.8

Evans complains that the court did not enter judgment in her favor under Code of Civil Procedure section 631.8, which permits a party to move for a judgment in its favor at the close of the other party's case without waiving the right to offer evidence if the motion is not granted. The trial court declined to rule on the motion until all the evidence was presented, as authorized by Code of Civil Procedure section 631.8, subdivision (a), which expressly grants the trial court the discretion to "decline to render any judgment until the close of all the evidence." "[T]his language has been interpreted to grant the trial court absolute discretion to deny a section 631.8 motion, meaning that 'a trial court is never required under any conceivable set of circumstances to grant a motion under section 631.8 of the Code of Civil Procedure. . . . [A] trial court may always deny such a motion regardless of the state of the evidence. . . .' [Citation.] As a result, as a matter of law the trial court could not have erred in postponing its decision on [the] motion until the close of the hearing." (*Erika K. v. Brett D.* (2008) 161 Cal.App.4th 1259, 1271.)

E. Request for Sanctions

Evans moves for sanctions against Sheen and her counsel in the amount of $19,250 on three grounds: the opposition to the appeal is frivolous; the respondent's appendix is misleading; and the briefing contains violations of the California Rules of Court. We decline to impose sanctions.

It is difficult to understand the points that Evans is attempting to make in her motion for sanctions, and even more challenging to find any citations to the record to

support her claims. She alleges that Sheen "concedes that she never served the named respondent in the present litigation," but offers no citation to such a concession in the record or briefing on appeal. Her next sentence refers to litigation Sheen "initiated with the required service," seemingly contradicting the prior sentence. Evans alleges that Sheen takes the position "that she had no obligation to serve the named respondent in her own petition," but does not identify where in the briefing Sheen allegedly espoused that view. Evans takes Sheen to task for relying on a non-probate case concerning general appearances in the context of an argument that Evans made a general appearance, but she offers no legal authority to support the implicit contention that the law differs in the probate context. Evans offers the irrelevant argument that she served her own petition properly, and then asserts that "respondent's position that she could omit notice or the frame of the petition 'she filed' is frivolous," citing a case without explanation, parenthetical, or pin cite. This unsupported argument taking issue with one section of the respondent's brief falls far short of demonstrating that the opposition to the appeal was frivolous.

Evans next argues that the respondent's appendix, which consists of a single document, is "intentionally misleading" because "it gives the impression that there is blue ink interlineation on a black and white photocopy of a trust document." Evans has not shown that anything here is misleading. The document in the appendix, a color copy, matches the trial court's description of Exhibit D.

Finally, Evans contends that Sheen has violated the California Rules of Court by offering numerous citations to unpublished opinions involving Evans's counsel, Nina Ringgold, including one in which another division of this appellate district declared her to be a vexatious litigant. Evans correctly observes that these opinions were not properly citable under California Rules of Court, rule 8.1115(b), but contrary to her argument, we see no manner in which California Rules of Court, rules 8.252 and 8.54 were violated here. If Sheen wished to argue that these unpublished opinions were properly citable under rule 8.1115(b), the procedure for citing them is set forth in California Rules of Court, rule 8.1115(c), not rules 8.252 and 8.54. While we condemn the citation of

unpublished opinions not falling within the narrow exceptions set forth in rule 8.1115(b), we decline to impose sanctions here.

II. Case No. B202637

In No. B202637 Sheen's former attorneys Marc Hankin, Leslie Howell, and Fritzie Galliani appeal their disqualification; and Hankin, Howell, and Evan Marshall appeal sanctions ordered by the trial court. Evans filed a respondent's brief and cross-appeal in this matter; Anthony Sheen joined in the respondent's brief.[5]

A. Appeal

1. Disqualification

On August 31, 2007, the court entered an order granting Anthony Sheen's motion to disqualify attorneys Howell, Galliani, and Hankin. On September 21, 2007, the court entered an order granting Evans's motion to disqualify the same counsel. The disqualified attorneys appeal and raise a series of threshold arguments concerning the disqualification orders. For the reasons discussed, we do not reach those issues.

Counsel argue that the issue of disqualification was rendered moot in the trial court by the attorneys' substitution out of the trust matter. The trial court ruled otherwise. Perhaps not surprisingly, counsel do not provide any citations to the portion of the record where the trial court concluded that the question of disqualification was not moot, nor does counsel offer citations to the record showing that at least one attorney,

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[5] The parties have again engaged in extensive motion practice, with three motions outstanding for our decision. We deny Evans's motion to dismiss the appeal and for sanctions filed March 6, 2009. We deny Marshall and Hankin's combined request for sanctions, motion to strike, request for judicial notice, and request that we refer counsel for Evans to the State Bar, filed April 2, 2009. We deny Marshall and Hankin's request for judicial notice filed January 11, 2010, and we deny Evans's request for sanctions filed along with her opposition to the request for judicial notice.

Hankin, suddenly purported to re-enter the matter within approximately two weeks after his substitution out as counsel for Tracy Sheen—now, according to his filing, representing a person named Derek Hersha. Instead, counsel assert that "none of the attorneys represent anyone other than themselves herein after June 2008," but this would seem to be belied by Hankin's July 13, 2007 filing on behalf of Hersha, which does not appear to be disclosed by the appealing attorneys. This apparent attempt to conceal relevant facts pertaining to the trial court's decision would permit us to consider the issue forfeited. (*Uniroyal Chemical Co. v. American Vanguard Corp*. (1988) 203 Cal.App.3d 285, 302 (*Uniroyal*) ["a record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed"].) Certainly the trial court did not abuse its discretion when it concluded that the matter was not moot in light of Hankin's conduct, and that the only way to end the involvement in the matter of attorneys the court believed to be conflicted was to formally disqualify them.

The withdrawal of the attorneys did not moot the question of disqualification in the trial court because of the court's concern that the attorneys in question would seek to re-enter the matter as representatives of other persons despite their withdrawal as counsel of record for Sheen, and the court protected against this potentially recurring issue by granting the disqualification motions despite the attorneys' previous withdrawal. Now, however, the issues are different. The case has concluded in the trial court with the conclusion that Sheen is the trustee, a determination that we uphold in this opinion. Even if the trial court erred in granting the motions to disqualify counsel, we cannot identify—nor has counsel set forth—any effective relief that we can offer the attorneys at this point. They had already withdrawn from the representation of Sheen at the time they were disqualified; the papers Hankin filed on behalf of Hersha had been withdrawn and Hersha found not to have standing to file pleadings; and counsel has not directed our attention to anything in the record indicating that counsel would have represented a client in the trial

court in this matter had counsel not been disqualified. If we overturn the decision disqualifying counsel, they still will not be counsel in this matter. As it appears that any decision we might render on the disqualification would have no practical impact on the parties, that issue is now moot. (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503 ["A case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief"].)

2. Sanctions

a. General Contentions

The sanctioned attorneys claim that all sanctions awards here are void because they each fail to state a statutory or factual basis for the order. It appears that the written orders of the court provided in the record on appeal omit the authorizing statute, but the sanctioned attorneys have not established that the failure to note the authorizing statute in an order necessarily voids any sanctions order, regardless of the authorizing statute. None of the cases cited by the attorneys so holds. *First City Properties, Inc. v. MacAdam* (1996) 49 Cal.App.4th 507, 517 (*First City*) recognizes that due process is not satisfied if it cannot be determined on a full record the statute under which the sanctions are imposed, but that is not the same as a requirement that every written order include a reference to a statute. Although the sanctioned attorneys also urge the absence of a stated factual basis as a basis for voiding all the sanctions orders, not all the orders fail to state a factual basis. The attorneys cite a series of cases concerning the requirements for orders made under specific authorizing statutes, but these cases do not state universal requirements for sanctions orders regardless of their authorizing statutes such that this argument could merit a sweeping invalidation of all the sanctions orders without individual consideration.

The sanctioned attorneys also argue that motions that provide notice under one statute do not empower the court to impose sanctions under another statute, but they do

not provide references to any of the motions for sanctions to this court for review, so this court is unable to determine how or whether this principle may apply here.

Next, the attorneys note that if the sanctions awards are to be justified under Code of Civil Procedure section 128.7, the safe harbor requirements were not satisfied here. The attorneys offer no citations to the record to support this argument, and it is therefore abandoned. (*Levin, supra,* 140 Cal.App.4th at p. 1486 ["It is not the duty of a reviewing court to search the record for evidence on a point raised by a party whose brief makes no reference to the specific pages where the evidence can be found"].)

The attorneys then cite two cases for the proposition that a sanctions motion may not be brought after the conclusion of the case or a dispositive ruling on the improper pleading. This is the entirety of the argument—counsel does not identify any sanctions orders that they claim were brought too late, nor any references to the record that would substantiate such an allegation. This is entirely insufficient to constitute a cognizable argument on appeal. Similarly deficient is the one-sentence argument against all the sanctions awards that reads, "[Code of Civil Procedure section] 177.5 likewise requires that an order imposing sanctions 'recite in detail' the conduct or circumstances justifying the order." "We need not address points in appellate briefs that are unsupported by adequate factual or legal analysis." (*Placer, supra,* 135 Cal.App.4th at p. 814.)

Last, counsel argues that all proceedings related to the disqualification of counsel, including purported sanctions orders, are void because they were entered while No. B196909 was pending here. We have already addressed the impact of No. B196909 on further proceedings, and we reiterate that the appeal of nonappealable orders in No. B196909 did not stay further proceedings with regard to sanctions. (*Pazderka, supra,* 62 Cal.App.4th at p. 666.)

Anthony Sheen and Evans argue that the sanctions orders under $5,000 are nonappealable, but they misread Code of Civil Procedure section 904.1, subdivision (b). Far from stating that such orders are eternally nonappealable, the statute provides that sanctions orders of $5,000 or less may only be appealed after the entry of final judgment in the main action. Moreover, sanctions orders against counsel become appealable when

counsel leaves the case because the policy of the one final judgment rule requiring a party to withhold appeal until final judgment is no longer applicable to former counsel. (*Barton v. Ahmanson Developments, Inc.* (1993) 17 Cal.App.4th 1358, 1361.) As the *Barton* court explained, "This case involves a countervailing policy: 'that it better serves the interests of justice to afford prompt appellate review to a party whose rights or liabilities have been definitively adjudicated than to require him to await the final outcome of trial proceedings which are of no further concern to him.' [Citation.] Appellant is liable for the sanction; respondent might seek to collect it from him or to enforce it. [Citations.] Appellant has an interest which is separate from his former client's. [Citations.] It is hardly fair to hold appellant in some kind of judicial penalty box while the underlying case proceeds without him. Appellant's particular problem is ripe for determination, and no purpose is served by delaying its resolution." (*Ibid*.)

b. July 5, 2007 Order for $1,068.22 Against Hankin

Hankin appeals an order for $1,068.22 made on July 5, 2007.[6] We have reviewed the six citations to the record made in the argument concerning this award, as well as the transcript of the hearing at which the order was made, and we conclude that Hankin has not made a record sufficient to demonstrate error.

Hankin has not provided an adequate record for reviewing the court's order because this court lacks the request for sanctions that is at issue; if it is in the massive record provided on appeal, counsel has not directed us to where it can be found. (*Metzenbaum v. Metzenbaum* (1950) 96 Cal.App.2d 197, 199 ["an appellate court cannot be expected to search through a voluminous record to discover evidence on a point raised by appellant when his brief makes no reference to the pages where the evidence on the point can be found in the record"].) We know from the citations that were provided that

[6] It appears that only Hankin appeals this order, as the caption for the argument specifies that the subject is the "July 5, 2007 Order *Against Hankin* for $1,068.22" (italics added) and the argument asserts, inter alia, that sanctions against Hankin were imposed for a motion with which Hankin had nothing to do.

the sanctions were requested by Anthony Sheen in the amount of $1,068.22 and that the request had something to do with a June 20, 2007 ex parte appearance: The minute order provides, "Anthony Sheen's ex parte motion for fees in the amount of $1,068.22 is granted." At the end of the hearing, Anthony Sheen's counsel asked the court to direct that the funds be paid by Tracy Sheen's counsel rather than by Tracy Sheen as a client, and the court responded, "I don't know" and asked against whom the sanctions were requested. Anthony Sheen's counsel stated that the sanctions were requested against Howell and Hankin "for filing an improper motion for reconsideration," and the court stated, "Whoever the motion was directed at is ordered to pay."

Because Hankin has not provided the motion for sanctions in question, we cannot determine whether the motion was in fact directed at him such that he was the subject of the order to pay, nor can we evaluate the merits of Hankin's arguments that he was improperly ordered to pay sanctions for an underlying motion to which he was not a party and which had been withdrawn. Moreover, without the motion in question, we cannot ascertain under what authority sanctions were sought, which prevents us from determining whether the procedural rules applicable to such a sanctions request were satisfied. "[A] record is inadequate, and appellant defaults, if the appellant predicates error only on the part of the record he provides the trial court, but ignores or does not present to the appellate court portions of the proceedings below which may provide grounds upon which the decision of the trial court could be affirmed." (*Uniroyal*, *supra*, 203 Cal.App.3d at p. 302.)

While we recognize the possibility that due process was violated here (*First City*, *supra*, 49 Cal.App.4th at p. 516), counsel's failure to provide an adequate record prevents us from evaluating that possibility. "The party seeking to challenge an order on appeal has the burden to provide an adequate record to assess error. [Citation.] Where the party fails to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him. [Citations.]" (*Rancho Santa Fe Ass'n v. Dolan-King* (2004) 115 Cal.App.4th 28, 46.)

c. Orders of $2,213.00 and $1,517.50 Against Hankin

On September 12, 2007, a written order was entered granting what was described as "Anthony Sheen's Order to Show Cause Re Monetary Sanctions Against Marc Hankin, filed on or about August 22, 2007." The order continues, "Marc Hankin is sanctioned the attorneys fees and costs incurred by Mr. Sheen due to Mr. Hankin's violation of this Court's August 9, 2008 Order barring further briefing on the pending disqualification motions, which fees and costs total $2213.00, said sanctions to be paid to counsel for Mr. Sheen . . . ."

Hankin contends that because the order does not cite the statutory basis for the order, it is invalid. He also argues that another order,[7] made at the same hearing, sanctioning him in the amount of $1,517.50 "suffers from the same lack of specificity." *Caldwell v. Samuels Jewelers* (1990) 222 Cal.App.3d 970, 977, on which Hankin relies as the basis for this argument, does not state that any order awarding sanctions, whatever the statutory basis, is invalid if the written order of the court does not specify the statute under which the sanctions were awarded. Rather, the portion of the decision to which Hankin refers concerns whether a sanction order complied with the requirement of Code of Civil Procedure section 177.5 that sanctions awarded under that provision "recite in detail the conduct or circumstances justifying the order." (*Ibid.*) But Hankin does not mention Code of Civil Procedure section 177.5 in his argument concerning this order, let alone argue that its specific provisions were applicable and unsatisfied here, so he has not established that *Caldwell* supports his argument in any respect.

Next, Hankin complains that he was only given Anthony Sheen's ex parte papers on August 22, 2007, and the hearing was continued to August 30, which he contends is an inadequate safe harbor period under Code of Civil Procedure section 128.7. The

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[7] He refers this court to a notice of ruling dated August 30, 2007 that recites that "Nathalee Evans's Order to Show Cause Re Monetary Sanctions Against Marc Hankin, filed on or about August 22, 2007, is granted. Marc Hankin is sanctioned the attorneys fees and costs incurred by Ms. Evans due to Mr. Hankin's violation of this Court's August 9, 2007 Order barring further briefing on the pending disqualification motions, which fees and costs total $1,517.50 . . . ."

record is again inadequate to review this claim. First, Hankin's factual contention concerning notice and a continuance to August 30 is not supported by any citation to the record. Second, Hankin has not established that the trial court sanctioned him under section Code of Civil Procedure section 128.7 such that its safe harbor provision would be at issue, nor has he provided this court with a full record of the court proceedings on the sanctions motion to permit us to review the basis of the sanctions order or to find a violation of due process if sanctions were imposed without any statutory authorization. (*Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 [a party's failure to provide an adequate record on an issue requires that the issue be resolved against that party; without the motion, opposition, and order, an appellate court cannot review the basis of the trial court's decision].)

Hankin contends that the award of sanctions based on Anthony Sheen's request was excessive and unreasonable because even if he filed an unauthorized document in violation of a court order for no further briefing, Anthony Sheen could have kept costs down by moving to strike it rather than making this ex parte application. He alleges, without authority, that the hours in the declaration of counsel were "manufactured" without a showing that they were justified or necessary and claims that this "appears to be" a tactical move to harass opposing parties, citing another ex parte application in the record. But Anthony Sheen's petition was an application to strike the pleading, and for the recovery of the costs associated with responding to the improper filing. Anthony Sheen's counsel's declaration was, if believed, evidence sufficient to justify the $2,213.00 award. (Evid. Code, § 411.) Hankin's complaint, made without any citations to legal authority and without setting forth any meritorious reason to overturn the ruling made by the court, does not establish any legal error in the sanctions award.

d. September 12, 2007 Order of $8,724.50 Against Hankin

Hankin was sanctioned in the amount of $8,724.50. While here, too, the record is partial, in that a page is missing from the multiple copies of the order that are included in

the record on appeal in these cases, error is apparent even from the partial record: At the hearing, the court stated imposed sanctions "pursuant to [Code of Civil Procedure section] 128.5." Code of Civil Procedure section 128.5 applies only to actions commenced on or before December 31, 1994, well before this action was filed. (*Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 807.) Even on the partial record provided to this court, the error in imposing sanctions under this provision is evident, and the award must therefore be reversed.

e. September 12, 2007 Order Against Hankin, Howell, and Marshall

Hankin, Howell, and Marshall were sanctioned in the amount of $2,260.50 in connection with a June 20, 2007 ex parte application to continue the June 21, 2007 hearing on disqualification. It does not appear that the attorneys have provided the sanctions motion, any documents filed in opposition, or any citation to the reporter's transcript of the hearing, instead merely contending that their conduct was appropriate and that the order cites no authority or basis for the sanctions and so it is void. We again reject the argument that the absence of a statutory reference automatically invalidates the order, and we are unable to review the contentions about the attorneys' conduct due to the attorneys' failure to provide an adequate record on review. (*Rancho Santa Fe Ass'n v. Dolan-King*, *supra*, 115 Cal.App.4th at p. 46; *Uniroyal*, *supra*, 203 Cal.App.3d at p. 302.)

B. Cross-Appeal

Evans has filed an appeal from the trial court's orders rendered on September 21, 2007 and November 7, 2007—the first, *granting* her motion to disqualify counsel and the second, denying her motion to correct or clarify, or to reconsider that order.

Evans complains about the ruling granting her motion to disqualify Sheen's counsel because she disputes a factual finding contained within the ruling concerning the disqualified attorneys' representation of Eugenia Ringgold. The order that Evans

purports to appeal, however, was an order in her favor: the court granted her motion to disqualify opposing counsel. "A party is not aggrieved by a judgment or order rendered in its favor." (*Gober v. Ralphs Grocery Co.* (2006) 137 Cal.App.4th 204, 211; see also *Soldate v. Fidelity Nat. Financial, Inc.* (1998) 62 Cal.App.4th 1069, 1073 (*Soldate*) [a party cannot appeal a favorable ruling].) Evans is not aggrieved by the court's order granting her motion (Code Civ. Proc., § 902), and she therefore lacks standing to appeal the order to the extent it granted her motion.

The court denied some additional relief that Evans requested in the motion to disqualify counsel, and this she may appeal. (*Soldate*, *supra*, 62 Cal.App.4th at p. 1073.) Evans also contends that the trial court should have issued orders restraining the disqualified attorneys from adverse representation in all pending trial and appellate court proceedings; compelling them to turn over all records of Ringgold, her estate, and her trust; and barring any award of attorney fees in both the Ringgold and Sheen trust litigation. Evans has not established any abuse of discretion here. The disqualification order precluded counsel from representing Sheen in the remaining Ringgold litigation, which is consistent with the scope of the trial court's authority. Evans provides no authority to support her apparent contention that, based on her motion in the Ringgold trust matter, the trial court in that matter could make orders concerning other actions. As far as turning over Ringgold's records to Evans, the disqualification motion did not remotely establish any right on the part of Evans to possess those records and documents; such an order would go far beyond the scope of the disqualification issue decided by the court. Finally, the court was well within its discretion to leave the attorney fee issues in the Ringgold case until such time as attorney fees were requested by Sheen's former counsel rather than to make a premature ruling without any pending request; we cannot conceive, nor does Evans establish, that the trial court in the Ringgold matter could make orders impacting attorney fee entitlement in the Quinlock Sheen trust litigation, which was pending before a different trial judge. Evans has not shown any abuse of discretion here.

With respect to the final relief sought by Evans—a declaration that the Sheen petition is a contest—this issue bears no connection to the question of the disqualification of attorneys and is far beyond the scope of Evans's appeal from the disqualification order and the order denying reconsideration. As in the other appeals, the gravamen of many of Evans's complaints is that the trial court did not decide pending matters in the order she preferred. Evans is trying to bootstrap her real dispute—that the court did not decide her motion to have Sheen's petition declared a contest—onto appeals of everything the court did do; therefore, she alleges that the court abused its discretion in ruling on attorney disqualification without ruling on her pending petition to have the Sheen petition declared a contest, then argues that her petition should have been granted. Absent a statutory preference given to particular motions, the trial court has the inherent authority to control the proceedings before it as it deems appropriate (Code Civ. Proc., § 128); Evans has not established any abuse of discretion in the court's exercise of that authority here.

III. Case Number B201949

This appeal concerns Evans's attempt to have Sheen's petition to be confirmed as trustee declared a contest, a petition denied by the trial court as premature because Sheen's petition had not yet been decided. Evans argues that the trial court should have ruled Sheen's petition to be a contest of the trust, which she believes would have precluded any further litigation on Sheen's petition. Accordingly, Evans claims that the trial court should have ruled on the question of a contest before ruling on the merits of Sheen's petition; that the evidence presented as of the date of the appeal in the ongoing proceedings upon Sheen's petition supported Evans's argument that Sheen was pursuing a contest; and that the court improperly failed to render any decision or address the merits of the pleadings on the contest petition.

We strongly question whether this order was appealable, but even if it was, Evans's contention amounts to a complaint that the trial court did not decide on pending matters in the order she preferred. A trial court has the inherent authority to control its

own processes and to manage its docket as it sees fit. (Code Civ. Proc., § 128.) Moreover, the question of whether the action was a contest was ultimately decided against Evans when the court ruled the trust amendment valid, and we have upheld that determination on appeal. This means that even if the court possibly erred in deferring a ruling on the contest question until the resolution of the Sheen confirmation petition, the result of any such error was that the trial court did not rule against Evans sooner. Accordingly, Evans cannot establish any actual prejudice from the court's denial of her petition as premature. In civil proceedings, error is reversible only if it is prejudicial. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475.)

Moreover, Evans requests as relief in this appeal that the order denying her petition as premature be vacated and an order granting her petition be entered, but that relief is unavailable in any event because in this opinion we uphold the trial court's ultimate ruling confirming Sheen as the trustee and finding that the Sheen petition was not a contest. Evans has not established reversible error or an entitlement to her requested relief, and we therefore affirm the trial court's order to the extent that it is appealable.

The parties filed a series of motions and requests for judicial notice in conjunction with this appeal, many of which remain outstanding. We deny Sheen's motion to dismiss the appeal. We grant Evans's request for judicial notice filed July 15, 2008, with respect to item 3, the notice of appeal filed in case number B209064, and deny the request with respect to the remaining items because the opening brief filed in case number B201949 (item 1) is already a part of the record in case number B201949 and because Evans has not adequately demonstrated the relevance of item 2. We grant Sheen's request for judicial notice filed September 30, 2008 as to items 1 and 2, and, as a result, we accept for filing respondent's three-item appendix received October 15, 2008, item 3 therein already having been judicially noticed at Evans's request—although, inexplicably, having already requested that we take notice of that document, Evans opposed our taking judicial notice of it when Sheen made the same request. We deny Sheen's November 14, 2008

request for judicial notice because the items are irrelevant to any issue presented by this case.

We deny Sheen's November 14, 2008 request for sanctions against Evans and her counsel because Sheen has not shown that the appeal was frivolous or prosecuted for reasons of delay. Sheen's entire showing of frivolousness is to argue that five passages in Evans's reply brief contravene a section of the Probate Code. The inclusion of five assertions that are contrary to the law in a reply brief does not establish that the entire appeal was totally and completely devoid of merit. (*In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650 [appeal is frivolous "when any reasonable attorney would agree that the appeal is totally and completely without merit"].) Sheen's argument that the appeal was prosecuted for purposes of delay is based on a series of contentions concerning Evans's counsel that do not demonstrate that this appeal was taken solely for delay. The remainder of the request for sanctions is an attempt to place before us unacceptable behavior by Evans's counsel in other matters, but this is irrelevant to the instant matter.

IV. Case Number B196909

The appeal designated with No. B196909 concerns a series of rulings about attorney disqualification in 2006 and 2007. The trial court denied Evans's motion to disqualify opposing counsel in December 2006, but subsequently issued an order to show cause on the court's own motion for reconsideration, then vacated its order denying her motion for disqualification, all before the time to appeal had elapsed and before any notice of appeal was filed. Evans purports to appeal from the order denying her motion to disqualify counsel, as well as from the order to show cause on the court's own motion for reconsideration and the order vacating the order denying Evans's motion to disqualify. There is no appealable order here.

The disqualification motion was denied on December 19, 2006, and as that was an appealable order (*Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 882), Evans was free to file a notice of appeal immediately. She elected not to do so, seeking instead

to persuade the trial court to reconsider its decision with a reconsideration motion. Troubled about the disqualification question, just over one month after denying the disqualification motion, the court ordered reconsideration of that decision on its own motion. Evans had not at that point filed an appeal, and therefore we discern no legal obstacle to the court exercising its inherent authority to reconsider its order, nor has Evans demonstrated any reason the court could not reconsider its decision on the motion to disqualify counsel.[8] (*In re Marriage of Barthold* (2008) 158 Cal.App.4th 1301, 1312-1314.) Evans argues that the trial court abused its discretion when it denied the motion for disqualification, but the trial court vacated that decision prior to Evans filing a notice of appeal, leaving her with no ruling to appeal and no ruling for us to review.

The remaining two rulings—the order to show cause on the court's own motion for reconsideration and the order vacating the order denying Evans's motion to disqualify—are not among the orders made appealable by section 1300 or Code of Civil Procedure section 904.1 and are therefore also nonappealable. We also note that Evans is not an aggrieved party with respect to these rulings because they are in her favor—she lost the motion, then the court reconsidered its decision and vacated the adverse decision. (Code Civ. Proc., § 902.) Evans attempts to maneuver a review of her other complaints on the basis that the court's rulings silently denied other motions "by operation of law," but these arguments are untenable: her claim that the ruling on the disqualification issue somehow also denied her petition concerning the Sheen petition is unsupported by authority or by coherent legal argument, and it makes no logical sense, as we can identify no connection between alleged conflicts on the part of Sheen's attorneys and the validity of the trust amendment.

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[8] Cases cited by respondents in this appeal to support the argument that that the court could not reconsider this order, such as *Nave v. Taggart* (1995) 34 Cal.App.4th 1173, 1176-1177; *Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368; *APRI Insurance Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 180; and *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1105, fn. 4 are inapplicable here because they all concern very different procedural contexts than that here, a court's reconsideration of its own ruling on an immediately appealable order prior to the passage of the time for appeal.

Evans has requested that if we conclude that the orders are nonappealable, we treat the appeal as an extraordinary writ. We have previously rejected her writ petition seeking disqualification of counsel in No. B201102 and Evans has not demonstrated any reason to reconsider that decision. We dismiss the appeal in No. B196909.

DISPOSITION

The appeal in No. B196909 is dismissed. Respondents in No. B196909 shall recover their costs on appeal.

The judgment in No. B201949 is affirmed. Respondent in No. B201949 shall recover her costs on appeal.

In No. B202637, the August 30, 2007 sanctions order against Marc Hankin in the amount of $8,724.50 is reversed. In all other respects, the judgment is affirmed. The parties shall bear their own costs in No. B202637.

The judgment in No. B209064 is affirmed. Respondent in No. B209064 shall recover her costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

WOODS, J.